SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 966.

THE UNITED STATES, APPELLANT,

vs.

CHARLES B. MASON, EXECUTOR OF THE ESTATE OF THOMAS MASON, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the United States Court of Claims.

THOMAS MASON
vs.
THE UNITED STATES. } No. 30750.

I. *Petition.*

Filed August 12, 1910.

The petition of Thomas Mason respectfully shows unto the court that he is a citizen of the United States, resident in the State of New Jersey, and that he is a captain on the permanent waiting orders list in the United States Revenue-Cutter Service.

That on May 3, 1895, your petitioner was placed on the retired list in said service as a lieutenant on half active duty pay, under the provisions of an act approved March 2, 1895 (28 Stats., 920), which pay was by act of April 12, 1902 (32 Stats., 101), increased to three-fourth of the active duty pay of said rank.

That under the provisions of an act approved February 25, 1905, the President nominated and the Senate confirmed the appointment of your petitioner to be a captain on the permanent waiting orders list of said service in recognition of "meritorious acts whilst he was in the service of the Navy and in the Revenue-Cutter Service" as is recited in his commission, a copy of which is annexed hereto. "Exhibit A."

That your petitioner under said commission received and held and enjoyed his said advancement in rank; and from that date to
2 the present has been borne upon the official register of said Revenue-Cutter Service as captain retired.

That whilst enjoying said rank the Congress in an act approved on April 16, 1908, entitled "An act to increase th' efficiency of the personnel of the Revenue-Cutter Service," provided as follows:

"SECTION 5. That any officer of the Revenue-Cutter Service with a creditable record who served in the Civil War in the land or naval forces of the United States, shall, when retired, have the rank and receive three-fourths the duty pay and increase of the next higher grade, and the provisions of this section shall apply to officers of the service now on the retired list."

That the record of service of your petitioner has been and is creditable; that in the Civil War he served in the naval forces of the United States, having been as a master's mate attached to the flagship "Hartford" under Admiral Farragut, participating in the passage of the forts at the mouth of the Mississippi, and in the engagements with the rebel batteries at Vicksburg in 1861–2; that he was promoted to the rank of acting ensign, and on the U. S. S. "Seneca," on duty in the North Atlantic Squadron, he participated in both attacks upon and in the capture of Fort Fisher; and that he was honorably discharged in February, 1868.

That because of his creditable record and naval service in the Civil War he became, and was, under the provisions of said section 5 of the act of April 16, 1908, entitled to receive advancement to the rank and three-fourths of the duty pay of the next higher grade, to wit, of the grade of senior captain in the Revenue-Cutter Service, and made due application therefor, but his application was denied upon the opinion and ruling of the Comptroller of the Treas-
3 ury under his construction of the meaning of the words "grade" and "rank" as used in said section 5 of said act.

But your petitioner is credibly informed and therefore avers that in other cases, exactly analogous to the present case, to wit, in the case of Chaplain (Rear Admiral) J. J. Kane, U. S. Navy, and of Senior Captain Joseph M. Simms, U. S. Revenue-Cutter Service, those officers were held to be entitled to the increased rank and pay provided by the law for those officers who had served in the Civil War and are to-day receiving the benefit thereof; and confident as to his legal right to his advancement in rank to senior captain under the said act of April 16, 1908, your petitioner claims his said advancement and the three-fourths pay of said rank and prays judgment for the difference of pay between that of his present rank of captain and the three-fourths duty pay of the rank of senior captain, at the rate of $31.25 per month from April 16, 1908, to wit, $812.50.

And petitioner will ever pray, etc.

THOMAS MASON,
Captain, Permanent Waiting Orders List,
U. S. Revenue-Cutter Service.

Subscribed and sworn to before me this 11th day of July, 1910.
[SEAL] EDWARD E. BRUEN,
Notary Public.

F. B. P. SANDS,
Attorney for Claimant.

4 Copy.

Theodore Roosevelt, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that reposing special trust and confidence in the integrity, diligence, and discretion of Thomas Mason, I have nominated and, by and with the advice and consent of the Senate, do appoint him in accordance with the act of Congress approved February 25, 1905, for meritorious acts while in the service of the Navy and of the Revenue-Cutter Service of the United States, a captain on the "permanent waiting orders" list in the Revenue-Cutter Service of the United States, and do authorize and empower him to execute and fulfil the duties of that office, according to law, and to have and to hold the said office with all the rights and emoluments there-

unto legally appertaining unto him, the said Thomas Mason, during the pleasure of the President of the United States for the time being. No increase of pay or allowance is to be made by the advance in grade hereby authorized.

In testimony whereof I have caused these letters to be made patent and the seal of the Treasury Department of the United States to be hereunto affixed. [SEAL.]

Given under my hand at the city of Washington, the twentieth day of March, in the year of our Lord one thousand nine hundred and five, and of the independence of the United States of America the one hundred and twenty-ninth.

(Signed) THEODORE ROOSEVELT.

By the President:

(Signed) L. M. SHAW,
Secretary of the Treasury.

5 II. *Traverse.*

Filed April 27, 1911.

In the Court of Claims of the United States, December term, A. D. 1911.

CHAS. B. MASON, EXR. OF THOMAS MASON,
vs.
THE UNITED STATES. } No. 30750.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,
Assistant Attorney General.

6 III. *Substitution of the executor.*

On January 14, 1911, the death of the claimant, Thomas Mason, being suggested, whereupon Charles B. Mason, having filed duly certified letters of administration, was ordered to be entered as the party claimant in this case.

7 IV. *Argument and submission of case.*

On the 26th day of April, 1911, this case came on to be heard. Mr. F. P. B. Sands was heard for the claimant; Mr. George M. Anderson was heard in opposition and the case was submitted.

8 V. *Amendment to petition.*

On May 11, 1911, on motion of claimant's attorney—the defendants consenting—the court allowed the following amendment to the petition to be filed, to wit:

Now comes the claimant in the above-entitled case and, leave first having been obtained from the court, files the following amendment to the petition filed in this cause on August 10, 1910:

Strike out the last words of said petition, to wit, "to wit, $812.50" and insert in lieu thereof the following words, to wit, "to the date of *of* the death of said Thomas Mason, on November 12th, 1910, to wit, the sum of $964.58."

F. P. B. SANDS,
Attorney for Claimant.

Subscribed and sworn to before me this 11th day of May, 1911.

ARCHIBALD HOPKINS, [SEAL.]
Chief Clerk.

9 VI. *Judgment dismissing petition.*

At a Court of Claims held in the city of Washington on the 29th day of May, 1911, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendant, and do order, adjudge, and decree that the petition of the claimant, Charles B. Mason, executor of estate of Thomas Mason, deceased, be, and the same is hereby, dismissed.

BY THE COURT.

10 VII. *Motion of claimant for a new trial.*

On June 12, 1911, the claimant filed a motion for a new trial, to wit:

Motion for new trial.

The claimant moves for a new trial on the ground of error of law in rendering judgment dismissing the petition.

F. P. B. SANDS,
Attorney for Claimant.

VIII. *Argument and submission of said motion.*

On November 6, 1911, the above motion came on to be heard. Mr. F. P. B. Sands was heard in support of the motion; Mr. George M. Anderson was heard in opposition, and the motion was submitted.

IX. *Order of court of December 4, 1911, on said motion.*

Claimant's motion for a new trial allowed. The former judgment dismissing the petition is vacated and set aside. The court files

findings of fact and conclusion of law and opinion and dessenting opinion as follows:

11 X. *Findings of fact and conclusion of law and opinion of the court and dissenting opinion.*

Filed December 4, 1911.

CHARLES B. MASON, EXECUTOR OF THE ESTATE OF THOMAS MASON, DECEASED, v. THE UNITED STATES.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

FINDINGS OF FACT.

I. Thomas Mason, the claimant's decedent, was a citizen of the United States, and always bore true allegiance to the Government thereof. He served with a creditable record as an officer in the United States service during the Civil War. Some time—the date unknown—after the Civil War he was appointed an officer in the Revenue-Cutter Service.

II. On May 3, 1895, while holding the rank of first lieutenant in the Revenue-Cutter Service, the claimant's decedent was retired under the provisions of the act of March 2, 1895 (28 Stat., 920), with one-half of the pay of a first lieutenant on the active list. By the passage of the act of April 12, 1902 (32 Stat., 101), his pay was increased to 75 per centum of the pay of a first lieutenant on the active list.

III. By virtue of the act of February 25, 1905 (33 Stat., 813), claimant's decedent was advanced "one grade, from first lieutenant to that of captain," with "no increase in pay or allowance by reason of such advance." On April 16, 1908 (35 Stat., 61), Congress passed an act entitled "An act to increase the efficiency of the personnel of the Revenue-Cutter Service," section 5 of which reads as follows:

"That any officer of the Revenue-Cutter Service with a creditable record who served during the Civil War in the land or naval forces of the United States shall, when retired, have the rank and receive three-fourths of the duty pay and increase of the next higher grade; and the provisions of this section shall apply to officers of the said service now on the retired list."

IV. The claim was presented to the accounting officers of the Treasury, and was disallowed by the Auditor for the Treasury Department and the Comptroller of the Treasury.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the estate of Capt. Thomas Mason, deceased, is

entitled to recover the difference of pay between the pay of
12 captain and three-fourths duty pay of senior captain, at the rate of $31.25 per month, from April 16, 1908, to September 10, 1910, a total sum of eight hundred and seventy-five dollars ($875).

OPINION.

ATKINSON, J., delivered the opinion of the court:

This case was decided May 29, 1911, adversely to the plaintiff, and it again comes before the court on a motion for a rehearing averring error of law in the judgment of the court in dismissing the petition.

The court in its opinion on the first hearing of the case (46 C. Cls., ——) made the following statement of facts, which are not disputed:

"The claimant's decedent herein served creditably throughout the Civil War in various capacities in the naval service of the United States. Subsequent to the close of said war (date not given in the record) he was appointed an officer in the Revenue-Cutter Service. On May 3, 1895, while holding the rank of first lieutenant in said service, he was retired under the provisions of the act of March 2, 1895 (28 Stats., 920), with one-half of the pay of a first lieutenant on the active list. By the passage of the act of April 12, 1902 (32 Stats., 101), his pay was increased to 75 per cent of the pay of a first lieutenant on the active list.

"By a special act of Congress approved February 25, 1905 (33 Stats., 813), claimant's decedent was advanced one grade, from first lieutenant to that of captain, with no increase in pay or allowance by reason of such advance, and on March 20, 1905, the President commisioned him a captain on the permanent waiting-orders list in the Revenue-Cutter Service.

"On April 16, 1908 (35 Stats., 61), Congress passed an act entitled 'An act to increase the efficiency of the personnel of the Revenue-Cutter Service,' section 5 of which reads as follows:

"'That any officer of the Revenue-Cutter Service with a creditable record, who served during the Civil War in the land or naval forces of the United States, shall, when retired, have the rank and receive three-fourths of the duty pay and increase of the next higher grade; and the provisions of this section shall apply to officers of the said service now on the retired list.'

"Under the provisions of the above general act claimant's decedent requested the Navy Department to allow him the rank and three-fourths of a senior captain's pay on the retired list. The auditor for said department rejected the request, and on appeal to the Comptroller of the Treasury Department the action of the auditor was approved.

"The question to be determined is whether the Congress intended by the act of April 16, 1908 (supra), that claimant's decedent should have the rank and receive three-fourths of the duty pay and increase of the grade of senior captain on the retired list, that being the grade next above captain on the retired list, or whether he should have the

rank of senior captain and receive three-fourths of the duty pay and increase of the grade of a captain only. At the time of the passage of the above act claimant's decedent held the rank of captain (junior grade), but was retired as first lieutenant and was drawing the pay only of a first lieutenant, and he now contends that said act, being general in its provisions, advances him to the grade of senior captain and entitles him to three-fourths of the retired pay of that rank."

13 The contention of counsel for the United States is that the purpose of the act of Congress was to give increased pay only to those officers who were contemplating retiring from active service, and thereupon raised the question of difference between "office," "rank," and "grade," in military service, citing the case of Wood v. United States (15 C. Cls., 151), which was affirmed by the Supreme Court (107 U. S., 414). Wood was a graduate of the United States Military Academy and filled the offices of second and first lieutenants, captain, major, lieutenant colonel, and colonel in the Regular Military Establishment of the Government. He was commissioned brigadier general of volunteers October 11, 1861, and major general of volunteers January 27, 1865, and on March 13, 1865, he was brevetted brigadier general and major general in the Regular Army. September 1, 1866, he was mustered out of the volunteer service, and on June 9, 1886, he was retired by order of the President, with the full rank of major general, on account of wounds received in battle while in the line of duty. He was paid the full pay of a retired major general until the passage of the act of March 3, 1875 (18 Stats., pt. 3, 512), when his salary was reduced to the pay of a brigadier general, that being the full rank of the office held by him at the time he was wounded in battle.

Mr. Justice Blatchford, in reviewing the decision of this court in Wood's case, supra, said, on pages 416 and 417, inter alia:

"The view of that court was that, under the statutes of the United States in reference to the Army, the office of an officer of the Army and his rank are not necessarily identical; that the office has a rank attached to it, expressed by its title, when no other rank is conferred on the officer; that, the office remaining the same, the officer may have a different rank conferred on him, as a title of distinction, to fix his relative position with reference to other officers as to privilege, precedence, or command, or to determine his pay; that, by section 1274 of the Revised Statutes, the pay of officers on the retired list of the Army is determined by the rank upon which they are retired; that, by section 1094, the officers of the Army on the retired list are a part of the Army of the United States, and, therefore, no one can be upon that list who is not an officer appointed in the manner required by section 2 of Article II of the Constitution; that an officer of any grade, on the active list, thus appointed, may be retired with a different rank from that which belongs to his office, when Congress so provides; that this is not to appoint him to a new and different office, but is to transfer him to the retired list, and to change his rank,

while he holds the same office; and that in connection with this change of rank his pay may be changed. These views appear to us to be sound. Gen. Wood, holding the office of a colonel of Cavalry in the Army, his retirement with the rank of major general, under the act of 1868, did not confer on him the office of major general. He remained in the office of colonel of Cavalry, and acquired a higher rank, and higher pay, as a retired officer. Such rank not being an office, Congress could change his rank, and with it his pay, as it did by the act of 1875."

The case of Gen. Wood permanently settles the differences between office, rank, and grade of line and staff officers of the United States Army. It also determines that appointments to office in the military arm of the Government can only be made by the executive branch in the manner provided by Article II and section 2 of the
14 Constitution, and not by congressional enactment; and that the Congress may retire an officer from active service and place him on the retired list upon a rank different from that which attaches to his office by general laws, and may change the mere rank of an officer on the active or the retired list at pleasure, without conflicting with the Constitution.

But the case of Gen. Wood is not this case. Plaintiff's decedent, at the time of his retirement, held the office and the rank of first lieutenant in the Revenue-Cutter Service, Treasury Department, and was paid according to that grade and rank. On the 25th of February, 1905, by a special act of Congress the President was authorized to advance him one grade, viz, to that of junior captain on the "permanent waiting-orders" list, without increase of pay, and he was commissioned as such officer on March 20 of that year; and under the ruling of this court in Hawkins's case (40 C. Cls., 110), having been promoted to the office and rank of captain, he could not thereafter be considered as a lieutenant, nor could he again be relegated to the duties of the lower grade. All ranks and grades in this branch of the service are actual and definite, with specific duties that are permanent, and although officers may be on the retired list they are still subject to assignment to active duty, and are entitled to longevity pay the same as if in active service.

In our former opinion in this case we decided that the fifth section of the act of April 16, 1908, provided for one grade advancement for all officers who had served creditably during the Civil War in the Revenue-Cutter Service above that held by them at the time of their retirement; and as plaintiff's decedent had been advanced one grade in rank by the special act of February 25, 1905, without pay, the general act of April 16, 1908, did not apply to him except to increase his pay one grade above that which he was receiving at the time of his retirement. We are now of the opinion that a more critical examination of said act does not justify the construction we then placed upon it. The words "shall, when retired, have the rank and receive three-fourths of the duty pay and increase of the next higher grade," being unambiguous, do not relate to the rank and pay of the

officers at the time of their retirement from the service, but relate to retirements subsequent to the passage of the act. We are led to the conclusion that this was the intention of Congress by the concluding sentence of the act, which reads: "The provisions of this section shall apply to officers of the said service now on the retired list." These words recognize the status, rank, and grade of the officers as they existed at the time of the passage of the act and can not therefore be applied to the time that they retired from active service.

It is elementary that a court in construing a legislative act must give effect to every part of the same; that all words must be construed in their ordinary sense, unless the court would be led to absurdity or to manifest injustice; and if it should, so to vary them as to avoid that which certainly could not have been the intention of the legislature. In other words, the court must place a reasonable construction upon all of the words used in the act. (Chew Heong *v.* United States, 112 U. S., 536.) Therefore, to arrive at any other conclusion than we have above stated, the court would have to eliminate from the statute the concluding sentence, which would be an unauthorized invasion of the rule of statutory construction.

15 Plaintiff's decedent held the office of junior captain by a commission of the President approved by the Senate when this act was passed, and we are now of the opinion that he is entitled to the rank and pay of captain of the senior grade thereunder.

Claimant's motion for a new trial is allowed. The former judgment dismissing the petition is vacated and set aside. Findings of fact and conclusion of law are this day filed awarding claimant judgment in the sum of $875.

DISSENTING OPINION.

PEELLE, Ch. J., adheres to the conclusion reached by the court in its former opinion, and mainly for the reasons stated in the last paragraph thereof, which in substance is that under the act of April 16, 1908, officers of the Revenue-Cutter Service who served creditably during the Civil War are entitled, upon retirement, to have the rank and three-fourths of the duty pay of the next higher grade, which, in the present case, is that of captain (junior grade); that as the claimant when retired in 1895 was a first lieutenant, he would, had he so remained until the passage of the act of 1908, now be entitled thereunder to the rank and three-fourths of the duty pay of a captain (junior grade), that being the next grade above that of first lieutenant; but having reached the grade of captain (junior grade) under the special act of Congress of 1905, which also denied him increase of pay over that to which he was entitled as a retired first lieutenant, the act of 1908 operates, if at all, only to give him three-fourths of the pay of the rank next above that held by him at the time of his retirement and not to advance him to a grade beyond that given him by appointment of the President (while retired) under the special act.

The language of the act of 1908 in terms applying to officers "now on the retired list" does not mean that officers so retired when thereafter advanced in grade by appointment under a special act of Congress shall make such advanced grade the basis for the "next higher grade" under the act of 1908. The words "now on the retired list" clearly mean officers who were then on the retired list in the several grades in which they were retired. Otherwise the language to support the claimant's contention would have to be so construed as to hold that the grade to which the claimant was advanced under the special act was in effect the grade held by him when retired.

The claimant's contention, carried to its logical conclusion, means that if an officer prior to the act of 1908 was retired, say, as a first lieutenant, and had been advanced or promoted by special act of Congress to the grade of lieutenant colonel, he would be entitled, under the act of 1908, to be retired with the rank and three-fourths of the duty pay of a colonel. The mere statement carries its own answer.

I am authorized to say that Howry, J., concurs in the views above expressed.

16 XI. *Judgment of the court.*

At a Court of Claims held in the city of Washington on the fourth day of December, 1911, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant and do order, adjudge, and decree that the claimant, Charles B. Mason, executor of the estate of Thomas Mason, deceased, do have and recover of and from the United States the sum of eight hundred and seventy-five dollars ($875).

BY THE COURT.

17 XII. *Application for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 4th day of December, 1911, in favor of claimant, the defendant, by their Attorney General, on the 9th day of January, 1911, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN Q. THOMPSON,
Assistant Attorney General.
F. DeC. F.

Filed January 15, 1912.

Ordered: That the above appeal be allowed a' prayed for.

BY THE COURT.

JANUARY 15, 1912.

18 Court of Claims.

CHARLES B. MASON, EXECUTOR OF THE estate of Thomas Mason, dec. *vs.* THE UNITED STATES.	No. 30750.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the orders and findings of fact and conclusion of law filed by the court; of the opinion of the court and dissenting opinion; of the final judgment of the court; of the application of the defendants for an appeal to the Supreme Court of the United States and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 31 day of January, 1912.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

(Indorsement on cover:) File No. 23042. Court of Claims. Term No. 966. The United States, appellant, vs. Charles B. Mason, executor of the estate of Thomas Mason, deceased. Filed February 3d, 1912. File No., 23042.

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